

Osborn, Mary E (OAH)

From: Carol A. Overland <overland@legalelectric.org>
Sent: Wednesday, September 26, 2012 4:11 PM
To: *OAH_RuleComments.OAH
Subject: MPCA's GHG Rule - OAH Rules Docket No. 16-2200-22910-1
Attachments: Overland_GHGRulesComment_9-26-12.pdf

Judge Cervantes:

Attached please find Reply Comment.

Thanks again for the opportunity to submit Reply Comments.

Carol A. Overland
(as individual, not representing any party)

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"Our lives begin to end the day we become silent about the things that matter." Dr. Martin Luther King, Jr.

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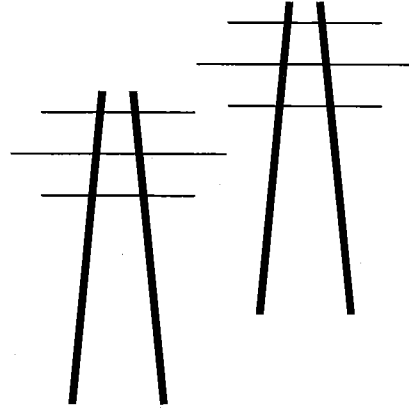
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September 26, 2012

Manuel Cervantes
Administrative Law Judge
Office of Administrative Hearings
P.O. Box 64620
Saint Paul, MN 55164-0620

Via email: rulecomments@state.mn.us

RE: Reply Comments of Carol A. Overland (as an individual)
In the Matter of the Proposed Amendments to Rules Governing Air Emissions Permits,
Minnesota Rules Chapters 200 7007, Greenhouse Gas Permitting Rules ("Tailoring" or
"GHG" Rules) and 7001
OAH Rules Docket No. 16-2200-22910-1

Dear Judge Cervantes:

Thank you for the opportunity to submit Reply Comments in response to written comments filed by September 19, 2012.

I have reviewed the comments of all parties, and in particular those of the Minnesota Chamber of Commerce and Xcel Energy. The Chamber and Xcel Comments are notably identical in most respects, word for word for the most part. It's hard to tell which is the chicken and which is the egg, but the Comments were written by one party and lightly edited by the other. Xcel is a driving member of the Chamber, but the Chamber also represents many other corporations that have a stake in this issue.

To the extent that the Chamber and Xcel Energy comments are identical, I request that they be regarded as just one comment and that they be given appropriate weight, similar to the manner in which citizen form comments are treated.

I also have noted the identity of parties filing comments and note that the "usual suspects" raising Green House Gas (GHG) concerns are absent. Again, I think this across the board failure to participate in this rulemaking is a function of inadequate notice of this proceeding. This is yet another reason this rulemaking should be more broadly noticed, that the MPCA should make best efforts to draw in Commentors in line with the MPCA's policy on public participation, and a properly noticed hearing be held and the comment period be extended.

Regarding the substantive comments of the Chamber and Xcel, it makes good sense to alter the "30 days" to "120 days" as noted in the Chamber/Xcel comment.

Xcel and the Chamber, however, adopt a rather binary approach, preferring the proposed rule to a more stringent threshold because of the regulatory burden it would place on the agency. This is not a binary issue, the rule proposed is one point toward one end of a continuum, and there is nothing on the record that reflects the extent of regulatory burden for various options along that continuum. The record, as it is, is not sufficient to support the rule as proposed.

Again, the MPCA's rule, as proposed, is deficient, because it does nothing to restrict greenhouse gas emissions, is not in compliance with the intent of the 2007 Climate Change Act, and is an abdication of the MPCA's authority to regulate greenhouse gas. Procedurally, this rulemaking is fatally flawed. At the very least, the proposed rule should be reworked, adequate notice provided to a broad range of interested parties beyond concerned CO2 emitters, and the hearing held as required by Minnesota's Administrative Procedure Act.

Though the Chamber states that "[t]he Minnesota GHG Permitting Rule and the Minnesota Next Generation Energy Act do not have to be in complete agreement as they have different purposes," there is no rational basis for the Permitting Rule and the Next Generation Energy Act to be at cross purposes. If the Permitting Rule does not leverage lower GHG emissions, what's the point?

As the Chamber notes, "[t]he MPCA has authority to be more stringent than EPA in setting permit thresholds." The MPCA should exercise this authority and adopt more stringent regulation of GHG.

Thank you for the opportunity to submit these Comments.

Very truly yours

A handwritten signature in cursive script, appearing to read "Carol A. Overland".

Carol A. Overland
Attorney at Law

Osborn, Mary E (OAH)

From: Alan Muller <alan@greendel.org>
Sent: Wednesday, September 26, 2012 4:12 PM
To: Cervantes, Manuel (OAH)
Cc: *OAH_RuleComments.OAH
Subject: Reply Comments--greenhouse gas regulation
Attachments: replycommentstojudgecervantes.doc

Dear Judge Cervantes:

Attached please find reply comments IN RE the greenhouse gas rulemaking.

I note that the time of sending is 4:12 PM (1612 hours) on Wednesday, September 19, 2012.

Respectfully submitted,

Alan Muller

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September 26, 1012

Manuel Cervantes
Administrative Law Judge
Office of Administrative Hearings
P.O. Box 64620
Saint Paul, MN 55164-0620
via email:

RE:

Reply Comments of Alan Muller In the Matter of the Proposed Amendments to Rules Governing Air Emissions Permits, Minnesota Rules Chapters 200 7007, Greenhouse Gas Permitting Rules ("Tailoring" or "GHG" Rules) and 7001 OAH Rules Docket No. 16-2200-22910-1

Dear Judge Cervantes:

The MPCA has not submitted substantial comments in response to the public testimony at the August hearing, and subsequent comments, including mine and Mr. Pentel's.

The comments submitted by Xcel Energy and the Minnesota Chamber of Commerce are trivial, duplicative, and unhelpful. So, it is ironic that these are the only comments the MPCA seeks to respond to with changes in the Rule.

The MPCA essentially says that the EPA investigated this matter, made decisions, and Minnesota has no responsibility to dig any deeper, or to consider the implications for Minnesota of unabated greenhouse (climate-forcing) emissions. This is a plain abdication of responsibility.

The MPCA says it would be expensive to permit large numbers of facilities but offers no evaluation of the benefits of doing so, or the price of not doing so.

The MPCA offers no alternative scenarios for consideration, between leaving the regulatory breakpoints where they now are (or would be, absent the temporary Rule) and adopting a 100 thousand ton rule as proposed. It is impossible to make rational decisions without alternatives to consider.

Alternatives should be evaluated in terms of the cost per ton of carbon-dioxide-equivalent abated, and against the conclusions and recommendations of the Minnesota Climate Change Advisory Group (citations below).

The MPCA offers only a contorted and unconvincing rationale for its failure to give proper notice in accordance with the Rule. So I reluctantly repeat my request that the matter be re-noticed and another hearing held.

The MPCA proposes a Rule, as detailed in the SONAR, that would have little or no effect in curtailing emissions of climate change forcing gases—commonly quantified in terms of “carbon dioxide equivalent.”

Yet, it is clear that the MPCA is aware of the threat that climate change poses to Minnesota. For example: see this information posted on the MPCA public website:

Climate Change: Scientific Consensus - Minnesota Pollution Control Agency

(<http://www.pca.state.mn.us/index.php/topics/climate-change/about-climate-change/climate-change-scientific-consensus.html>)

Climate Change Publications: Reports and Fact Sheets - Minnesota Pollution Control Agency

(<http://www.pca.state.mn.us/index.php/topics/climate-change/regulatory-initiatives-programs-and-policies/climate-change-publications-reports-and-fact-sheets.html>)

So why does the MPCA apparently seek to keep this information out of the rulemaking process? Failure to consider the underlying need to regulate greenhouse gases would render the proceeding farcical.

Therefore, I incorporate all the information in these links into my comments by reference, and ask you to review the material and discuss it in your report. I realize this might seem somewhat burdensome, but in view of the failure of the Agency to provide this information in the rulemaking materials, I see no alternative.

The issue is critical to the future of Minnesota, the MPCA has a responsibility to protect the environment of Minnesota, but the MPCA proposes a rule it admits would have little effect.

If the MPCA does not want to use its air regulatory/permitting programs to abate climate-changing emissions, it has a responsibility to propose some other, at least equally effective, approach, not to just ignore or deny the problem. This has not been done. It is not obvious what effective alternative approaches might be.

The proposed rule makes no pretense of meeting the need. It is not “reasonable” within the intended meaning of the rulemaking process, and should be rejected outright.

It is apparent from the record that the MPCA did little or no meaningful outreach to the public. The scheduling of the hearing during the day had the effect of discouraging public participation. The Agency seems to regard the regulated community as the primary “stakeholder.” But it follows that those who would be required to get permits, and, hopefully, abate emissions, might prefer to avoid doing so. But the proper role of the Agency is to protect the public interest, not any set of special interests.

I hereby submit the following additional information bearing on the need for Minnesota to act to abate global warming (climate-changing/climate “forcing”) emissions. I incorporate this information by reference into these comments and ask you to evaluate it. I have made an effort to provide information focused on Minnesota when such is available.

Presentations of Dr. James E. Hansen, Columbia University

Scholarly Publications of Dr. James E. Hansen, Columbia University

(Dr. Hansen is possibly the most prominent climate scientist.)

Minnesota Climate Change Advisory Group

350.org

CCA Resources - Adaptation/Action Plans

Minnesota Climate Change Adaptation Working Group

Climate change mitigation and adaptation: Minnesota DNR

Climate Change in 20123

Climate Change Action

Climate Change Publications: Reports and Fact Sheets - Minnesota ...

Carbon Pollution: A Game Changer for America's Hunting and Fishing Heritage

Climate Change: Scientific Consensus - Minnesota Pollution Control ...

Climate Change, an Ojibwe Perspective - Minnesota Sea Grant ...

Thinking critically about climate change ... - Humanists of Minnesota

Moose populations in Minnesota crashing as climate change ...

I understand the MPCA is probably going to push you to promptly approve its proposed Rule, and to object to allowing expiration of the present, temporary Rule before a final Rule is in place. But the Agency had sufficient time to address this matter and did not do so.

Conclusions and Recommendations

You should reject the proposed final Rule in its entirety along with the associated SONAR.

In the alternative, you should insist that a new hearing be scheduled with proper public notice.

The MPCA should restart the rulemaking with adequate public outreach.

The MPCA should develop a SONAR that identifies the threats climate change poses to Minnesota and proposes a reasonable and effective Rule to do what is within the powers of the Agency to abate said climate change. In my opinion, this should include leaving the breakpoints for regulation of carbon dioxide equivalent emissions at 100 tons per year, but phase in permitting of those emissions on some reasonable schedule.

Respectfully submitted,

Alan Muller